



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

FEB 05 2018

OFFICE OF  
WATER

Benjamin Kirby  
Hall & Associates  
1620 I Street, NW  
Suite 701  
Washington, DC 20006-4033

Subject: Freedom of Information Act Request No. EPA-HQ-2018-003194, Final Response

Dear Mr. Kirby:

This is in response to your Freedom of Information Act (FOIA) request, identified above, dated January 9, 2018, that you submitted to the U.S. Environmental Protection Agency (EPA or Agency). Your request seeks the following documents:

"All EPA documents addressing either generally or site-specifically whether a variance, waiver, or deferral to WQS compliance may be based on the existence of a man-induced condition that precludes use attainment (e.g., acid mine drainage, dam construction or removal)."

We understood your request to refer specifically to whether a water quality standard (WQS) variance can be used to provide time to meet water quality standards when the attainment of the use/criterion is precluded due to human-caused conditions. As such, the information that you are seeking is publicly available on EPA's website at <https://www.epa.gov/wqs-tech/final-rulemaking-update-national-water-quality-standards-regulation>. This URL links to the EPA webpage "Final Rulemaking to Update the National Water Quality Standards Regulation," which contains a link to the updated rule in 40 CFR 131.14(b)(2)(i)(A)(1), as well as to the Federal Register Notice, the supporting documents in the Docket, and a webinar on variances. The updated rule in 40 CFR 131.14(b)(2)(i)(A)(1) directly addresses your inquiry, citing the factors listed in §131.10(g) that may be used to justify a WQS variance. Specifically, §131.10(g)(3) allows the consideration of human-caused conditions in assessing feasibility of attaining designated uses (and WQS variances per the new regulation). Because this information is publicly available, your FOIA request for this information is being administratively closed, in accordance with EPA's FOIA regulations. See 40 C.F.R. Part 2, Subpart A.

If you consider this response to be a denial of your request, you may appeal this response by email at [hq.foia@epa.gov](mailto:hq.foia@epa.gov), or by mail to the National Freedom of Information Office, U.S. EPA, 1200 Pennsylvania Avenue, N.W. (2822T), Washington, DC 20460. Only items mailed through the United States Postal Service may be delivered to 1200 Pennsylvania Avenue, N.W. If you are submitting your appeal by hand delivery, courier service, or overnight delivery, you must address your correspondence to 1301 Constitution Avenue, N.W., Room 6416J, Washington, DC 20001. Your appeal must be in writing, and it must be received no later than 90 calendar days from the date of this letter. The Agency will not consider appeals received after the 90-calendar-day limit. Appeals received after 5:00 pm EST will be considered received the next business day. The appeal letter should include the FOIA tracking

number listed above. For quickest possible handling, the subject line of your email, the appeal letter, and its envelope, if applicable, should be marked "Freedom of Information Act Appeal." Additionally, you may seek dispute resolution services from EPA's FOIA Public Liaison at [hq.foia@epa.gov](mailto:hq.foia@epa.gov) or (202) 566-1667, or from the Office of Government Information Services (OGIS). You may contact OGIS in any of the following ways: by mail, Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, MD 20740-6001; email, [ogis@nara.gov](mailto:ogis@nara.gov); telephone, (202) 741-5770 or (877) 684-6448; or fax, (202) 741-5769.

Thank you for your interest in this information.

Sincerely,

A handwritten signature in blue ink that reads "Sara Hisel-McCoy". The signature is fluid and cursive, with the first name "Sara" being the most prominent.

Sara Hisel-McCoy, Director  
Standards and Health Protection Division